

[REDACTED]  
[REDACTED]  
[REDACTED]  
JAN 30 1990

CERTIFIED MAIL.

Dear Applicant:

We have considered your application for recognition of tax exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code.

Information submitted discloses that you were incorporated on [REDACTED] under the laws of the State of [REDACTED].

The purposes of your organization include the promotion of social and general welfare and common good of the unit owners and/or members of [REDACTED] in connection with the operation, maintenance, and management of the condominium pursuant to and in conformity with the Act on a non-profit basis in [REDACTED].

The activities of the organization consist of the care, upkeep, and surveillance of the condominium property; promulgation and enforcement of rules, regulations, and restrictions respecting the use, occupancy, and maintenance of condominiums and to purchase condominium units and to lease, mortgage or convey the same, subject to provisions in the By-laws.

Sources of the organization's support consist of monthly condominium fees, capital assessment fees, and late charge fees.

Expenses have been shown for accounting fees, legal fees, office expenses, property maintenance, utilities, and insurance.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Name	[REDACTED]	[REDACTED]	[REDACTED]				
	12/21/89	JAN 19 1990	1/30/90				

[REDACTED]

Section 1.501(c)(4)-1(a)(2)(i) of the income tax regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-99 published in Cumulative Bulletin 1974-1 on page 131 states that a homeowners association must not conduct activities directed to the exterior maintenance of private residences and that the common areas or facilities must be for the use and enjoyment of the public.

Your "Master Deed" has procedures for maintaining the private residential lots and common areas of your organization.

The common areas, as stated in your Master Deed are the private property of the association and ownership is divided equally among the homeowners.

Revenue Ruling 74-17 published in Cumulative Bulletin 1974-1 on page 130, cites, in part, an organization that was formed by the unit owners of a condominium housing project that was operated to provide for the management, maintenance, and care of the common areas of the project. Its income is from membership assessments and its disbursements are for normal operating expenses. It states that "...a condominium is defined by statute in the state in which the organization is located as an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. The statute provides that the owner of a condominium unit individually owns the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of his unit." The statute goes on to list the common areas of the unit such as bearing walls, columns, floors, central heating, pumps, pipes, etc.

"This Revenue Ruling goes on to state that..." The statute also imposes a requirement on the owner of the project to make and record a declaration of project restrictions and servitudes prior to the conveyance of any condominium therein, such restrictions to bind all owners of condominiums in the project..."

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), the court held that since a cooperative housing corporation's activities were of the nature of an economic and private cooperative undertaking, it was held not to be tax exempt as a social welfare organization under section 501(c)(4) of the Code.

Revenue Ruling 65-201 published in Cumulative Bulletin 1962-5 on page 170 holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for Federal tax exemption under section 501(c) or any other provision of the Code.

Revenue Ruling 69-280 published in Cumulative Bulletin 1969-1 on page 152 holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

Your organization's purposes and activities are similar to the purposes and activities cited in Revenue Ruling 74-17. Your "common areas" are not open for the use and enjoyment of the general public.

Revenue Ruling 74-17 goes on to state that, by virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium properly derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus any maintenance or care of such common areas or elements constitutes private benefit to the individual homeowner members as apposed to promoting the common good and general welfare of the people of the community.

Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

Based on the information submitted and the applicable law cited above, it is held that your organization's purposes and activities are for the private benefit of its members and not for the direct benefit of the community as a whole. Accordingly, it is held that your organization does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

In accordance with this determination, you are required to file form 1120 for Federal income tax purposes.

[REDACTED]

Your attention is called to section 528 of the Internal Revenue Code which provides certain procedures by which qualifying homeowners associations may elect to be treated as a tax exempt organization. If you determine that you qualify under section 528, you may elect to file corporate tax return Form 1120H. If you determine that you do not qualify under section 528, you must file corporate tax return Form 1120.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office conference staff. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

Sincerely yours,

[REDACTED]  
[REDACTED]  
District Director

Enclosures: Publication 892